

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Improving Safety Communications in	)	WT Docket No. 02-55
the 800 MHz Band	)	
	)	

**PETITION FOR DECLARATORY RULING**

**Mexican Concessionaires**

*Comunicaciones Digitales del Norte, S.A. de C.V.*  
c/o Patricio Ruiz

*Radio Sistemas de Tamaulipas, S.A. de C.V.*  
c/o Luis Felipe Rendon  
c/o Salvador Padilla López  
c/o Jesse Russell  
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**PETITION FOR DECLARATORY RULING**

For reasons stated herein, Petitioners hereto respectfully request the Commission to take the following actions related to the implementation of the Amended Protocol<sup>1</sup> to which this matter applies:

1. Order that Sprint Corporation cause that payment be made to Petitioners for reasonable costs and damages they have incurred by reason of their removal from the 800 MHz Spectrum as a consequence of the implementation of the Amended Protocol on the Mexican side of the Sharing Zone.
2. Order that AT&T cause that payment be made to Petitioners for their reasonable costs and damages they have incurred by reason of the implementation of the Amended Protocol in the Sharing Zone along the U.S. Mexico border to the extent such costs and damages have been assumed to be paid by AT&T in its acquisition of Nextel Mexico, now AT&T Mexico.

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<sup>1</sup> Protocol Between the Department of State of the United States of America and the Secretariat of Communications and Transportation of the United Mexican States Concerning the Allotment, Assignment and Use of the 806-824/851-869 MHz and 896-901/935-940 MHz Bands for Terrestrial Non-Broadcasting Radiocommunication Services Along the Common Border (June 8, 2012) ("Amended Protocol").

3. Order that Sprint Corporation and AT&T report to the Commission payments that they have made, if any, to Mexican Operators within the Mexican side of the Sharing Zone, pursuant to the Amended Protocol.

## **BACKGROUND**

1. On June 8, 2012, the United States and Mexico signed an amendment to the bilateral agreement modifying the international allocation of 800 MHz Spectrum in the U.S.-Mexico border region, which enables the U.S. to proceed with 800 MHz band reconfiguration along the “Sharing Zone” of the border.

2. The “Sharing Zone” spans 110 kilometers into each country along the U.S. – Mexico border.<sup>2</sup> Pursuant to the Amended Protocol, new limitations, rights and conditions are imposed on licensees operating in the 800 MHz Spectrum within the Sharing Zone on both sides of the border. To comply with the objectives of the Amended Protocol, it was anticipated that some of the incumbent operators on the Mexican side of the Sharing Zone would face relocation.

3. The Commission has primary responsibility for assuring compliance with the Protocol on the U.S. side of the border. The counterpart to the Commission in Mexico is the *Instituto Federal de Telecomunicaciones* (known as “IFETEL” or “IFT”), and it is likewise responsible for compliance with the Amended Protocol on the Mexican side of the Sharing Zone.

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<sup>2</sup> 1994 Protocol at Article I, Par.1

4. The Commission ordered the reasonable costs of Mexican licensees required to relocate out of the 800 MHz Spectrum pursuant to the Amended Protocol are to be paid by Sprint Corporation and by Nextel Mexico for such relocation costs.<sup>3</sup>

5. Both Sprint and Nextel Mexico were ordered by the Commission to assure payment of the rebanding and/or relocation of licensees, including licensees on the Mexican side of the Sharing Zone.<sup>4</sup>

6. Full transition on the Mexican side has been delayed because of a dispute concerning the costs associated with implementing the Amended Protocol requirements. Some of the Mexican operators in the Sharing Zone (“Mexican Concessionaires” or “Mexican Licensees”) are being asked to abandon their operations within the 800 MHz to benefit other users, including AT&T’s subsidiary, AT&T Mexico.

7. The Mexican Licensees who are filing this Petition have not been compensated by Sprint (and/or AT&T Mexico) for actions taken by the IFT against the Petitioners to comply with the requirements of the Amended Protocol.

8. Obligations of Sprint and AT&T Mexico under the Amended Protocol are within the Commission’s purview.

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<sup>3</sup> See FCC 04-168 Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order. (Released August 6, 2004). See also e.g., WT Docket No. 02-55. Fifth Report and Order by PSHSB, dated April 1, 2013, ¶ 67, “It is our expectation that Mexican licensees will relocate in a timely manner, in light of U.S.-Mexico agreement in the Amended Protocol *and the commitments made by Sprint and NII to pay the reasonable costs of such relocations*. (Emphasis added). See also Amended Protocol at Article V, as interpreted by the FCC, stating, “... the Administrations shall ensure that operators or related corporate entities operating in the co-primary allotment cover all such reasonable costs of incumbent operators in Mexico that are associated with the transition to comparable facilities on the replacement channels and that are consistent with understandings agreed to by the Task Force.”). The Commission has also referenced Letter from James B. Goldstein, director - Spectrum, Sprint Nextel, to Ambassador Philip L. Verveer, Deputy Assistant Secretary of State, United States Coordinator for International Communications and Information Policy, U.S. Department of State (June 8, 2010).

<sup>4</sup> *Id.* See also acknowledgement by Sprint Corporation of its obligations and those of Nextel Mexico and its successors, which would encompass AT&T Mexico, as a successor, in the Bankruptcy Court Filing in *NII Holdings, Inc., et al, Debtors*. Case No. 14-1611 (SCC); U.S. Bankruptcy Court, Southern Dist. N.Y.

### ***Standing***

9. Petitioners are licensees operating within the 800 MHz Spectrum on the Mexican side along the U.S.-Mexico border that is within the “Sharing Zone” and thus are affected by terms of the Amended Protocol. Petitioners’ licenses and businesses are to be substantially, if not completely, required to be changed by the IFT due to the Amended Protocol. The Amended Protocol requires compensation to Petitioners for the imposed changes made and to be made on them as may be required to fully implement the Amended Protocol. The orders of the Commission and the compensation commitment under the Protocol has not been complied with as it applies to Petitioners, and for that reason, this request for Enforcement Action is appropriate.

### ***Sprint’s Obligation to Cover Transition/Relocation Expenses of Mexican Licensees in the Sharing Zone***

10. Sprint Corporation benefited from the actions required under the Amended Protocol.<sup>5</sup> In exchange for such benefits, Sprint made certain financial commitments.<sup>6</sup>

11. At the time of the Amended Protocol, Sprint obligated itself to cover the reasonable relocation costs of Mexican Incumbent licensees.<sup>7</sup>

12. NII Holdings, Inc., similar to Sprint, was also obligated to pay the transition and/or relocation expenses of licensees on the Mexican side of the Sharing Zone.<sup>8</sup>

13. Sprint, through its subsidiary, Nextel Communications, Inc., entered into an agreement with NII Holdings, Inc. dated July 27, 2011 (the “Rebanding Agreement”).

Pursuant to such Rebanding Agreement, Nextel-Mexico, a subsidiary of NII Holdings, Inc.,

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<sup>5</sup> See e.g., Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*Report and Order*) overall and in particular ¶¶ 329-332.

<sup>6</sup> *Id.*

<sup>7</sup> See footnote 3. In addition, Sprint made an oral contract with Petitioners as further described in ¶14.

<sup>8</sup> *Id.*

would facilitate negotiations with the Licensees operating on the Mexican side of the Sharing Zone and paying up to the first \$18 million in costs and expenses related to such negotiations. Sprint, pursuant to such Rebanding Agreement obligated itself to pay and/or reimburse Nextel-Mexico for costs in excess of \$18 million incurred or paid by Nextel-Mexico to the Mexican licensees in the Sharing Zone associated with their rebanding and/or relocation out of the 800 MHz Spectrum.<sup>9</sup>

14. Pursuant to its commitments, Sprint held various discussions with the Petitioners culminating in a meeting on October 5, 2014 in Dallas, TX with the Petitioners. At that meeting, Sprint committed to compensate the Petitioners for their planned vacating of operations in the 800 MHz Spectrum on the Mexican side of the Sharing Zone. Petitioners agreed to the settlement amount that was communicated orally by Sprint.

### ***Breach of Agreement***

15. Two months after the Dallas meeting with Petitioners, it became public that Nextel-Mexico was being sold to AT&T. Sprint started distancing itself from the commitment it made in Dallas with Petitioners after the announcement in January 2015 that AT&T was acquiring Nextel-Mexico.

16. Nextel-Mexico was combined with AT&T's other Mexico wireless business and is now known as "AT&T Mexico".

17. Petitioners had submitted their documentation to Sprint as required for the negotiations for payment of the anticipated costs for rebanding and/or for relocating out of the 800 MHz Spectrum.

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<sup>9</sup> See e.g. *NII Holdings, Inc., et al, Debtors*. Case No. 14-1611 (SCC); U.S. Bankruptcy Court, Southern Dist. N.Y., "debtor and Nextel-Mexico are jointly and severally liable to fund [and to pay] the first \$18 million in costs and expenses associated with ... its performance and its obligations under the 800 MHz Realignment Plan in Mexico." Doc. # 724 ¶¶ 12 - 18.

18. To date, Sprint has breached its commitment to Petitioners contending that the compensation lies with AT&T Mexico as the acquirer of Nextel-Mexico.

19. AT&T has denied its assumptions of the obligation of Nextel-Mexico for compensation to the Mexican concessionaires for rebanding and/or relocating out of the 800 MHz Spectrum as required under the Amended Protocol.

***Actions by IFT***

20. *Instituto Federal de Telecomunicaciones* (“IFT”) held a meeting on April 9, 2015 where IFT, including Alejandro Navarrete, a Director of the IFT, made it clear that IFT would see to it that Petitioners would be compensated for their rebanding costs as required by the Amended Protocol. Follow up meetings were held on October 1, 2015, and October 22, 2015. Present in the October meetings at the IFT were Petitioners and representatives of AT&T. A central point of discussion at all these meetings were the obligations of Sprint and of Nextel Mexico (now AT&T Mexico) to compensate Petitioners for what would be required of Petitioners in rebanding their operations.

21. Fast forward to April 20, 2017 and in a meeting of the IFT, that same Director Navarrete referenced in the above paragraph made a 180 degree turn. Directors at that meeting said that they were not sure who would be obligated to pay rebanding costs under the Amended Protocol. IFT seemed to be protecting the interests of ATT at the expense of Petitioners. The oddity of comments made by Directors of the IFT at the April 20, 2017 meeting, reflected a lack of transparency and an appearance of undue influence by the benefactors of the new position of the IFT.

22. The new position of the IFT expressed at the April 20, 2017 meeting reflects a failure of compliance with the Amended Protocol in that an expression of not knowing

who or how compensation for Mexican operators pursuant to the Amended Protocol is an intentional failure to hold Sprint and AT&T accountable for the commitments that two years before were clearly acknowledged.

23. The IFT asked Petitioners to sign a retroactive agreement stating that Petitioners had been authorized to operate in the 400MHz since 2008. That would have been a false, if not illegal, for them to sign, and would have resulted in a denial of compensation now that Petitioners were being removed from 800MHz to 400MHz. Moreover, Petitioners had been told by the IFT back in the April 9, 2015 meeting that the 400MHz spectrum was “not clean” (i.e., conflicts and interference) and was not comparable to the 800MHz. Petitioners, based on advice of their Mexican legal counsel, refused to sign the retroactive agreement, and as a result IFT declared Petitioners in default and allegedly took action to remove them from the 800 MHz Spectrum to allegedly “comply” with the Amended Protocol.

24. Regardless of the legality of how the IFT removed or is attempting to remove Petitioner’s from the 800 MHz Spectrum, the fact that it was done to “comply” with the Amended Protocol means that Sprint and/or AT&T Mexico are obligated under the Amended Protocol to provide the compensation required thereunder.

25. The IFT was asked by Petitioners at the April 20, 2017 meeting what compensation has been made to Mexican operators along the Sharing Zone pursuant to the Amended Protocol, and the IFT responded that they did not know the amount of payments and/or who made the payments, if any. Such a response implies a lack of compliance with the Amended Protocol to assure compensation. That same requirement for monitoring full compliance by all parties, should require the FCC to ask and make public what payments



have been made by Sprint and/or AT&T Mexico to Mexican operators along the Sharing Zone pursuant to the Amended Protocol. If this information does not exist or is not obtainable, then that is an intentional failure of full compliance that may lend itself to improper dealings.

26. The Petitioners complied with the requirements imposed on them to provide documents showing the financial costs for complying with the Protocol. These were submitted to Sprint in a timely manner. Reference to this was even made in the October 2015 Petitioner meetings with the IFT.

27. The lack of compensation to the Petitioners is in violation of Orders of the Commission.

28. Such failure has and will cause legal actions that has and may cause the interruption and the smooth implementation of the Amended Protocol.

### ***Conclusion***

29. Based on the clear understanding of the Commission, Sprint and/or Nextel-Mexico (AT&T Mexico) should pay the reasonable costs of Petitioners, who as Mexican Concessionaires legitimately operated in the 800 MHz Spectrum are now being requested to vacate that Spectrum to accommodate and comply with the Amended Protocol. It is in the interest of the Commission to issue an Enforcement Action as requested herein.

Respectfully submitted,

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